

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**FORTY-FIFTH MEETING**

**NOVEMBER 8-9, 2011**

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>The 45th Meeting of the Review Committee</b>   | <b>4</b>  |
| <b>Selection of Review Committee Acting Chair</b>   | <b>7</b>  |
| <b>Report: National NAGPRA Program Report on the Implementation of NAGPRA in FY 2011</b>  | <b>7</b>  |
| Ms. Sherry Hutt   | 7         |
| Review Committee Questions and Discussion   | 8         |
| <b>Action Item: Presentation, Discussion, and Approval of the Review Committee’s Annual Report to Congress for FY 2011, as Required by NAGPRA (25 U.S.C. 3006 (h))</b>                      | <b>9</b>  |
| Discussion on November 8, 2011  | 9         |
| Discussion on November 9, 2011  | 9         |
| Review Committee Motion   | 10        |
| Review Committee Motion   | 10        |
| <b>Action Item: Appointment of the Subcommittee to Draft the Review Committee’s Annual Report to Congress for FY 2012, and Discussion of the Scope of the Report</b>                        | <b>10</b> |
| Review Committee Motion   | 10        |
| <b>Public Comment – November 8, 2011</b>  | <b>10</b> |
| Ms. Patricia Capone   | 10        |
| Mr. Ernest Vallo, Sr.   | 11        |
| Ms. Jan Bernstein   | 12        |
| Mr. Ashley George   | 12        |
| Mr. Lalo Franco   | 12        |
| <b>Request by Los Angeles County, CA, that the Review Committee Act on an Agreement to Reinter Human Remains and Associated Funerary Objects Determined to be Culturally Unidentifiable</b> | <b>13</b> |
| Presentation  | 13        |
| Review Committee Questions and Discussion   | 14        |
| Review Committee Motion   | 15        |
| <b>Action Item: Discussion and Review of the Review Committee’s Dispute Procedures and Findings Procedures</b>  | <b>15</b> |
| <b>Presentation: Federal Agencies</b>   | <b>16</b> |
| <b>Presentation: An Update on the Accomplishments of the National Park Service’s Park NAGPRA Program</b>  | <b>16</b> |
| Ms. Mary Carroll  | 16        |
| Ms. Brenda Todd   | 17        |
| <b>Presentation: An Update on Repatriation by the USDA Forest Service and the Agency’s Response to the Federal Agency NAGPRA Repatriation Data Call in FY 2011</b>                          | <b>17</b> |
| Mr. Frank Wozniak   | 17        |
| Review Committee Questions and Discussion   | 18        |
| <b>Public Comment – November 9, 2011</b>  | <b>18</b> |
| Ms. Hilary Soderland  | 18        |
| Ms. Melany Johnson  | 18        |
| Mr. Lalo Franco   | 19        |
| Mr. Ben Aleck   | 19        |

|                                |           |
|--------------------------------|-----------|
| <b>Mr. Matthew Nelson</b>      | <b>19</b> |
| <b>Ms. Mari Lyn Salvador</b>   | <b>19</b> |
| <b>Upcoming Meetings</b>       | <b>20</b> |
| <b>Closing Comments</b>        | <b>20</b> |
| <b>Meeting Adjournment</b>     | <b>21</b> |
| <b>Review Committee Motion</b> | <b>21</b> |

## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chairman;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
  - A. The identity or cultural affiliation of cultural items, or
  - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (2006).

Six Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates NPS administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.nps.gov/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on March 4, 2011 (Vol. 76, Number 43, pages 12132-12133).

## **The 45th Meeting of the Review Committee**

The 45th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. David Tarler, DFO, at 2:03 p.m., Tuesday, November 8, 2011. Mr. Tarler confirmed the attendance of the Review Committee members. Ms. Worl, Review Committee Chair, was absent. Mr. Tarler acknowledged the hosts for this meeting and thanked them for their gracious hospitality: the National Judicial College and the National

Tribal Judicial Center at the University of Reno – Nevada; the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; and the Reno-Sparks Indian Colony, Nevada.

Mr. Wright, Jr., Vice Chair of the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, welcomed everyone to Reno. Mr. Myron Smart, Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, offered a traditional welcome to open the meeting on Tuesday, November 8, 2011. Mr. Tarler introduced the National NAGPRA Program staff present at the meeting.

Mr. Ernest Vallo, Sr., Pueblo of Acoma, New Mexico, offered an opening prayer on Wednesday, November 9, 2011. Chairman Arlan Melendez, Chairman of the Reno-Sparks Indian Colony, Nevada, welcomed everyone on behalf of the 27 tribes in the state of Nevada. Chairman Melendez acknowledged the importance of repatriation and the work done by everyone involved in NAGPRA implementation. Chairman Melendez stated that the Review Committee had the support of the Intertribal Council of Nevada, as well as all tribal and council leaders in the state.

Review Committee members present –  
Mr. Mervin Wright, Jr. – Acting Chair  
Ms. Sonya Atalay  
Mr. Alexander (Alec) Barker  
Ms. LindaLee (Cissy) Kuuleilani Farm  
Mr. Eric Hemenway  
Mr. Adrian John

Designated Federal Officer present –  
Mr. David Tarler, Training and Civil Enforcement Coordinator, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –  
Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service  
Ms. Alayna Rasile, Contractor, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior  
Mr. Stephen Simpson, Division of Indian Affairs, Office of the Solicitor, Department of the Interior  
Ms. Kathy Hanson, Chief, Learning & Development, National Park Service

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees) –  
Mr. Ben Aleck, Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nixon, NV  
Ms. Anne Amati, University of Denver, Museum of Anthropology, Denver, CO  
Mr. Charles Armitage, Natural Resources Conservation Service, Reno, NV  
Ms. Jan Bernstein, Bernstein & Associates, Denver, CO  
Ms. Tina Biorn, California Department of Transportation, Sacramento, CA  
Mr. Michael Black, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA  
Ms. Peg Brady, Autry National Center, Los Angeles, CA  
Ms. Rebecca Brave, Osage Nation, Oklahoma, Pawhuska, OK  
Ms. Tammy Buonasera, University of Arizona, Chester, CA  
Mr. Sean Burnett, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, Shingle Springs, CA  
Mr. Ralph Burns, Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Reno, NV  
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Ms. Mary Carroll, National Park Service, Park NAGPRA Program, Denver, CO  
Ms. Sarah Cowie, University of Nevada – Reno, Department of Anthropology, Reno, NV  
Mr. Taylor Cuch, Northern Ute, Los Angeles, CA  
Mr. Joseph Daigh, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, Placerville, CA  
Mr. Mike DeSpain, Chico Band of Mechoopda Indians, Chico, CA  
Mr. John Dietler, SWCA Environmental Consultants, Pasadena, CA  
Ms. Crystal Dilworth, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, Placerville, CA  
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Mr. Clayton Dumont, San Francisco State University, San Francisco, CA  
Ms. Michon Eben, Reno-Sparks Indian Colony, Nevada, Reno, NV

Ms. Carrie Feldman, National Museum of the American Indian, Suitland, MD  
 Mr. Jacob Fisher, California State University – Sacramento, Department of Anthropology, Sacramento, CA  
 Ms. Briannon Fraley, Wiyot Tribe, California, Loleta, CA  
 Mr. Fred Frampton, US Dept. of Agriculture, National Forest Service, Humboldt-Toiyabe National Forest, Sparks, NV  
 Mr. Lalo Franco, Santa Rosa Indian Community of the Santa Rosa Rancheria, California, Lemoore, CA  
 Mr. Anthony Garcia, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA  
 Mr. Ashley George, Fallon Paiute-Shoshone Tribe  
 Mr. Andrew Godsey, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, Shingle Springs, CA  
 Mr. Ray Gonzalez, Santa Rosa Indian Community of the Santa Rosa Rancheria, California, Tachi Yokut Tribe, Lemoore, CA  
 Ms. D. Rae Gould, University of Massachusetts, Amherst, MA  
 Mr. Ryan Gross, Field Museum, Chicago, IL  
 Mr. George Gurion, Buena Vista Rancheria of Me-Wuk Indians of California, Sacramento, CA  
 Ms. Paulette Hennum, California Department of Parks and Recreation, Sacramento, CA  
 Ms. Antonia Hernandez, LA Plaza de Cultura y Artes, Los Angeles, CA  
 Ms. Christina Hodge, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Ms. Eleanor Johnson, Kijik Corporation, Anchorage, AK  
 Mr. John F.C. Johnson, Chugach Alaska Corporation, Anchorage, AK  
 Ms. Melany L. Johnson, Susanville Indian Rancheria, California, Susanville, CA  
 Ms. Natasha Johnson, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA  
 Mr. Chris LeBlanc, University of Nevada – Reno, Department of Anthropology, Reno, NV  
 Ms. Faustina Lopez, Greenville Rancheria of Maidu Indians of California, Greenville, CA  
 Mr. Roland McCook, Smithsonian Repatriation Review Committee, Montrose, CA  
 Ms. Dawn McDivitt, County of Los Angeles, Los Angeles, CA  
 Mr. Marvin Marine, Buena Vista Rancheria of Me-Wuk Indians of California, Angels Camp, CA  
 Ms. Angela Martin, Greenville Rancheria of Maidu Indians of California, Red Bluff, CA  
 Ms. Alison Meadows, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Mr. Arlan Melendez, Reno-Sparks Indian Colony, Nevada, Reno, NV  
 Ms. Nell Murphy, American Museum of Natural History, New York, NY  
 Ms. Jennifer Murray, National Museum of the American Indian, Washington, DC  
 Ms. Carmen Narcia, Ak Chin Indian Community of the Maricopa Indian Reservation, Maricopa, AZ  
 Ms. Angela Neller, Wanapum Heritage Center, Beverly, WA  
 Mr. Matthew Nelson, Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, Bishop, CA  
 Mr. Joseph Ontiveros, Soboba Band of Luiseno Indians, San Jacinto, CA  
 Mr. Douglas Pippin, State University of New York – Oswego, Oswego, NY  
 Ms. Christina Preston, California State University – Sacramento, Department of Anthropology, Sacramento, CA  
 Mr. Pete Ramirez, Stockton, CA  
 Ms. Peggy Rhoades, Yurok Tribe of the Yurok Reservation, California, Klamath, CA  
 Ms. Angela Rivera, Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, Shingle Springs, CA  
 Ms. Helen Robbins, Field Museum, Chicago, IL  
 Mr. Antonio Ruiz, Jr., Buena Vista Rancheria of Me-Wuk Indians of California, Sacramento, CA  
 Ms. Crystal Rios, Greenville Rancheria of Maidu Indians of California, Greenville, CA  
 Mr. Mari Lyn Salvador, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA  
 Ms. Cheryl Seidner, Wiyot Tribe, California, Loleta, CA  
 Mr. Kyle Self, Greenville Rancheria of Maidu Indians of California, Greenville, CA  
 Mr. Myron Smart, Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation  
 Ms. Martina Smith, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA  
 Ms. Hilary Soderland, Society for American Archaeology  
 Ms. Crista Stewart, Greenville Rancheria of Maidu Indians of California, Greenville, CA  
 Mr. Shiraz Tangri, Alston & Bird LLP, Los Angeles, CA  
 Ms. Semana Thompson, Gila River Indian Community of the Gila River Indian Reservation, Sacaton, AZ  
 Ms. Brenda Todd, National Park Service, Park NAGPRA, Lakewood, CO  
 Ms. Khrystyne Tschinkel, State University of New York – Oswego, Freehold, NY  
 Mr. Ernest Vallo, Sr., Pueblo of Acoma, New Mexico, Acoma, NM  
 Ms. Elisabeth Warszycki, State University of New York – Oswego, Oswego, NY

Mr. Frank Wozniak, US Dept. of Agriculture, National Forest Service, Albuquerque, NM  
Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA

### **Selection of Review Committee Acting Chair**

Ms. Atalay nominated Mr. Wright, Jr., as Chair for the 45<sup>th</sup> meeting of the NAGPRA Review Committee. Mr. Barker seconded the nomination. The nomination was passed by unanimous vote of the voting members (Ms. Atalay, Mr. Barker, Ms. Farm, Mr. Hemenway and Mr. John).

### **Report: National NAGPRA Program Report on the Implementation of NAGPRA in FY 2011**

#### **Ms. Sherry Hutt**

Ms. Hutt summarized the activities of the National NAGPRA Program, which were described in the draft National NAGPRA Program Report for FY 2011. Ms. Hutt stated that the National NAGPRA Program is a neutral party providing support to the Secretary of the Interior for implementation of NAGPRA, as designated by statute.

Notices: Ms. Hutt stated that 109 notices of inventory completion and intent to repatriate cultural items were published in the Federal Register in FY 2011, bringing the cumulative total of notices published by the National NAGPRA Program to 2,033. From 2005 to August 2011, Ms. Jaime Lavallee served as Notice Coordinator, and she was responsible for the publication of over 800 notices. Ms. Lavallee left the National NAGPRA Program in August 2011 to pursue a doctorate of law. On behalf of the National NAGPRA Program, Ms. Hutt commended Ms. Lavallee for her accomplishments and high work standard. Ms. Hutt stated that the Notice Coordinator position was recently filled, and the individual was chosen by a selection committee from a very robust field of over 100 applicants including many from Indian tribes, scientific organizations, and the museum community. The new Notice Coordinator will begin work with the National NAGPRA Program in the near future. Ms. Hutt stated that Ms. Alayna Rasile, a contractor and ex-intern with the National NAGPRA Program, worked to ensure the continuity of notice publication during the interim period.

Grants: Ms. Hutt stated that in FY 2011, 59 NAGPRA grant applications were received and 37 grants were awarded. Over the past five years, Ms. Sangita Chari, Grants Coordinator, has implemented several outreach strategies to improve the success of the grants program. Each project grant recipient participates in a training webinar to facilitate understanding and improve grant administration. In addition, Ms. Chari is very proactive in following up on grants from prior years to ensure that grant recipients fully utilize all funds by the end of each grant's funding cycle. Ms. Chari uses feedback from the grants panel and works closely with grant applicants — both successful and unsuccessful — to improve future submissions. The grants panel is comprised of Federal employees from outside the National NAGPRA Program. In 2011, for the first time, the grants panel reviewed and scored the grants applications electronically, thereby streamlining and improving the application review process. Ms. Chari is currently working with Ms. Kelsea Raether, an intern with the National NAGPRA Program, on a grants deliverables report, which will analyze grant money usage over time.

Databases and Website: Ms. Hutt stated that Ms. Mariah Soriano, Database and Website Coordinator, is responsible for populating, updating, and otherwise administering seven databases. In FY 2011, Ms. Soriano focused on auditing and reconciling the data in the databases to ensure their accuracy. In FY 2012, Ms. Soriano will work with a contractor to ensure that the databases and the information they contain are secure. Ms. Soriano regularly updates the content of the National NAGPRA Program website to reflect new information and upcoming events. In FY 2011, Ms. Soriano compiled information submitted by Federal agencies regarding repatriated objects. That information is contained in the draft Program report. Ms. Hutt stated that Federal agencies should be commended for their significant efforts in fulfilling the Government Accountability Office's request for repatriation information. Information on repatriation by both Federal agencies and museums is contained in the National NAGPRA Program report.

Civil Penalties: Ms. Hutt stated that, as reported at the November 2010 meeting, Mr. Bob Palmer, Civil Penalty Investigator, was no longer with the National NAGPRA Program. As of November 2011, no successor has been appointed to that position. Mr. Tarler, Civil Penalty Coordinator, is now working with a contractor, Ms. Shannon Keller O'Loughlin, to review and organize the civil penalty cases in anticipation of moving forward with the investigation of alleged museum failure to comply with the requirements of NAGPRA. From FY 2006 through FY 2010, Mr. Tarler and Mr. Palmer worked to resolve over one hundred counts of alleged failure to comply.

Review Committee: Ms. Hutt stated that Mr. Tarler, while serving as DFO, has worked to streamline the processes used by the Review Committee to exercise its responsibilities, by creating templates to aid constituents in bringing issues before the Review Committee. In addition, Mr. Tarler has spent a significant amount of time working with the parties coming before the Review Committee to ensure they are fully prepared. For the Santa Fe, NM meeting, in May 2012, Ms. Hutt stated that she will be acting in the capacity of the Review Committee DFO. This will allow Mr. Tarler adequate time to focus on a review of the NAGPRA regulations at 43 C.F.R. Part 10. During FY 2011, the definition of Indian tribe, at 43 C.F.R. 10.2(b)(2), was amended. Currently, a rule dealing with the disposition of unclaimed human remains, funerary objects, sacred objects, and objects of cultural patrimony discovered on Federal lands after November 16, 1990, is under review within the DOI for publication as a proposed rule.

Training: Ms. Hutt stated that the National NAGPRA Program presented training to over a thousand participants in 25 sessions, including 7 webinars. Webinars are becoming a vital part of the National NAGPRA Program's training array, as webinars allow topic-specific, cost-effective training opportunities for NAGPRA constituents.

Record Archive: Ms. Hutt stated that Ms. Robin Coates, Secretary, works to provide support for staff and the Review Committee. In FY 2012, Ms. Coates will have the added responsibility of overseeing the archiving of NAGPRA records at the National Archives and Records Administration (NARA). The archival project will allow for the safe retention of the extensive NAGPRA records that reach back into the early 1990s. Ultimately, NARA will be responsible for responding to Freedom of Information Act (FOIA) requests, rather than the National NAGPRA Program. Ms. Hutt stated that NARA representatives plan to attend the 46<sup>th</sup> Review Committee meeting in Santa Fe, NM, and will be available to respond to questions or comments by the Review Committee.

GAO Report: Ms. Hutt stated that the National NAGPRA Program fulfilled the GAO's recommendations on NAGPRA implementation. Although the report highlighted no concerns with the procedures implemented in 2008 for Review Committee member selection, the GAO indicated that they would like to leave that portion of the report open for the next four years to continue to monitor the selection process. Ms. Hutt stated that all other recommendations of the GAO, concerning Federal agencies and the DOI, have been fulfilled, and the National NAGPRA Program hopes to hear in the near future that those issues are fully resolved.

Other Business: Ms. Hutt stated a number of functions within the National NAGPRA Program could not be completed without the work of contractors. In FY 2012, the program is pleased to work with the following contractors: Ms. Rasile, Ms. Raether, Ms. Keller O'Loughlin, Ms. Koscielski, and the Museum of Northern Arizona. The Museum of Northern Arizona was chosen by the NPS contracting office in Denver, CO, to work with the National NAGPRA Program to complete various reports, such as the annual National NAGPRA Program report. Ms. Hutt stated that the National NAGPRA Program would like to continue meeting with Federal agency NAGPRA coordinators to foster communication and information exchange.

### **Review Committee Questions and Discussion**

Mr. Barker asked for details on the status and scope of the review of 43 C.F.R. Part 10. Ms. Hutt stated that the review is in the pre-regulatory rulemaking stage. In the spring of 2011, the National NAGPRA Program held listening sessions with Indian tribes and the public, allowing NAGPRA constituents to provide input on potential revision. In addition, feedback is often received by program staff at trainings and other outreach opportunities, such as meetings of national organizations. Mr. Tarler will incorporate this feedback in his review of the regulations and produce a draft document, which will undergo an extensive comment period and receive additional feedback. Ms. Hutt stated that this is a very large project that will take a couple of years to complete.

Mr. Hemenway thanked the National NAGPRA Program staff for their hard work and commended the work of Ms. Lavalley. Mr. Hemenway urged Ms. Hutt to keep the Review Committee apprised of the status of civil penalty investigative work, as the investigation of civil penalty allegations is a vital step in the process; lack of this step can



delay tribal progress in NAGPRA implementation. Mr. Hemenway stated that misunderstanding of the 90-day rule was another barrier to implementation, and asked whether the Review Committee could receive a summary of input received from NAGPRA constituents regarding this issue. Mr. Hemenway stated he appreciated the inclusion of the issue regarding use of the term “cultural item,” and added that many tribes consider this to be a very important issue.

Mr. Wright, Jr., asked about the relationship between the grant process and repatriation. Ms. Hutt stated that repatriation grants of up to \$15,000 are available for Indian tribes and/or museums to offset the costs of repatriation. Repatriation grants are noncompetitive and are available from October through June of each fiscal year. In FY 2011, repatriation grants increased over 300 percent. Consultation/documentation grants are competitive, with a submission deadline usually occurring in March of each year. The number of consultation/documentation grants awarded by the grants panel depends upon the balance of grants funds remaining after repatriation grants are paid. Mr. Wright, Jr., encouraged communication with museums, to clarify that completion of the repatriation process is a requirement and not grant-dependent.

Mr. Wright, Jr., asked for clarification of the regulatory rulemaking process for 43 C.F.R. Part 10, specifically notification regarding comment periods. Ms. Mattix stated that all rulemaking within the DOI has to follow the process set forth in the Administrative Procedure Act, which includes notice publication in the Federal Register.

Ms. Atalay thanked the National NAGPRA Program staff for preparing the report, and asked when the report on grants deliverables by Ms. Raether might be available for the Review Committee’s consideration. Ms. Hutt stated that the program hoped to be able to support Ms. Raether’s efforts to complete a draft of the report for consideration at the Santa Fe, NM meeting.

### **Action Item: Presentation, Discussion, and Approval of the Review Committee’s Annual Report to Congress for FY 2011, as Required by NAGPRA (25 U.S.C. 3006 (h))**

#### **Discussion on November 8, 2011**

Ms. Hutt stated that it was the hope of the National NAGPRA Program that the Review Committee would complete its Annual Report to Congress for FY 2011 prior to adjournment of the meeting, which would allow for distribution of the report by the end of the calendar year. Following completion of the report, the National NAGPRA Program will print the report and distribute it to the appropriate Congressional offices. Mr. Simpson stated that the Review Committee members could discuss the report during the meeting and over the course of the evening, voting to approve the final version during the meeting the following day.

Mr. Barker gave a brief summary of the Review Committee’s draft report to Congress for FY 2011, copies of which were provided to the Review Committee members for review prior to the meeting. During the meeting, a copy of the draft report was shown by projector for the benefit of the Review Committee members and audience. The Review Committee members offered comments and suggestions for revising the draft report. The Review Committee agreed to incorporate these suggestions over the evening and bring the draft report back for discussion the following day.

#### **Discussion on November 9, 2011**

Mr. Wright, Jr., stated that Mr. Barker was able to incorporate the changes to the report discussed the previous day and provided a copy of the updated report to the Review Committee members. Mr. Barker reviewed the changes incorporated into the report for the benefit of the Review Committee members and those present at the meeting.

The substantive changes include:

- Under discussion of the GAO report, changing “consider the matter closed,” to “feeling that the changes they have made since 2008 addressed the problem,” as requested by the National NAGPRA Program to more accurately reflect their response to the GAO report.
- At the request of Mr. Wright, Jr., to more properly reflect his testimony to the Senate, adding the notion that not only should human remains be buried and stay buried, but that human remains and associated funerary objects should not be separated.
- To address the concern that certain statements in the report concerning the regulation at 43 C.F.R. 10.11, while they might reflect a 2008 decision of the Review Committee, nonetheless were not necessarily the

- views held by current members of the Review Committee, clarifying the current concerns of the members.
- On the advice of counsel, changing the word “revised” to “amended.”
- Eliminating references to concerns by individual members.
- As discussions of concerns raised by the GAO report have become complicated, expressing the Review Committee’s continuing commitment to a balance between the concerns of all parties to NAGPRA.
- Expressing the Review Committee’s deep appreciation for gifts given to the members out of courtesy, but also explaining that members are constrained by the ethics laws and regulations from accepting some gifts.
- Clarifying the need for additional staffing in the National NAGPRA Program to support the necessary activities to comply with the Act.
- Clarifying Recommendation 7, the definition of Native American, by recognizing that there are strongly held views regarding the definition of “Native American” in the NAGPRA statute, but, nonetheless, emphasizing that Congress needs to address this matter, as it lies outside the jurisdiction of either the Review Committee or the National NAGPRA Program.

#### **Review Committee Motion**

Mr. Barker made a motion that the Review Committee adopt the report to Congress for 2011 to the extent that it is complete, subject to the addition of the description of any action that arose the second day of the meeting. Ms. Farm seconded the motion. The motion was passed by unanimous vote, with one abstention (Mr. Wright, Jr.).

#### **Review Committee Motion**

Following the presentations on November 9, 2011, the Review Committee reviewed Mr. Barker’s additions to the report to Congress for 2011. Ms. Atalay made a motion that the Review Committee approve the report to Congress for 2011. Ms. Farm seconded the motion. The motion was passed by unanimous vote, with one abstention (Mr. Wright, Jr.).

### **Action Item: Appointment of the Subcommittee to Draft the Review Committee’s Annual Report to Congress for FY 2012, and Discussion of the Scope of the Report**

Ms. Farm and Mr. Hemenway volunteered to draft the Review Committee’s report to Congress for FY 2012.

#### **Review Committee Motion**

Mr. Barker made a motion to confirm the appointment of Ms. Farm and Mr. Hemenway to the subcommittee to draft the Review Committee’s Annual report to Congress for FY 2012. Mr. John seconded the motion. The motion passed by unanimous vote.

Mr. Wright, Jr., stated that, while he did vote for this issue, for future issues when serving as Chair he would prefer to cast a vote only when necessary to break a tie. Consequently, all subsequent votes during the meeting were with five voting members (Ms. Atalay, Mr. Barker, Ms. Farm, Mr. Hemenway, and Mr. John).

### **Public Comment – November 8, 2011**

#### **Ms. Patricia Capone**

Ms. Patricia Capone, Associate Curator, Peabody Museum of Archaeology and Ethnology, Harvard University, thanked the Review Committee for the opportunity to participate and thanked the meeting hosts, the Reno-Sparks Indian Colony and the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, for their hospitality. Ms. Capone stated that 23 percent of the Peabody Museum’s overall collections activity relates to NAGPRA. The Peabody Museum has committed significant attention and resources over the years in a good faith effort to implement NAGPRA and cultivate the respectful relationships necessary to this process. The Peabody Museum’s collection is one of the largest and broadest collections subject to the Act and the new rule at 43 C.F.R. 10.11. The Peabody Museum has completed requirements to enable repatriation of approximately 3,137 human remains and over 10,000 funerary objects, representing about 13 percent of the total number available nationally for repatriation. Of these collections, physical repatriation has been completed for 2,924 individual human remains, 3,861 funerary objects, 1 sacred object, 73 objects of cultural patrimony, and 18 objects that are both sacred objects and objects of

cultural patrimony.

Ms. Capone stated that consultations with Native American Indian tribes take several forms, including: visits to the museum, correspondence, and web consultation through the online collections database developed, in part, through a grant from the NPS. The Peabody Museum's website has 37 password-protected web lists for consultation with groups. In FY 2011, the Peabody Museum hosted four NAGPRA consultation visits at the museum, completed two physical repatriation events, and published three Federal Register notices.

Ms. Capone stated that the Peabody Museum began implementing the new NAGPRA regulations under 43 C.F.R. 10.11 for disposition of culturally unidentifiable human remains, and has allocated resources for three new staff members to work toward implementing NAGPRA. In FY 2011, the Peabody Museum initiated consultation, upon request, with six tribes under the new regulations at 43 C.F.R. 10.11, and since the end of the fiscal year the number has almost tripled. The Peabody Museum received a two-year NAGPRA consultation grant to implement the new regulations for culturally unidentifiable human remains from eastern Massachusetts.

Ms. Capone stated that the Peabody Museum was concerned with several aspects of 43 C.F.R. 10.11, specifically that:

- The consultation process is impractical and raises new risks and uncertainties;
- There are poorly defined limits to discussions that must occur and the parties who must participate;
- The cost of conducting these large-scale and open-ended discussions is not yet clear, but appears to be great; and
- The time for implementing this process appears to have been vastly underestimated.

Ms. Capone stated that these factors could contribute to an atmosphere of confusion and expense for Indian tribes and institutions. It is important that the process be well-structured and better defined in order to avoid a splintered approach to dispositions.

Ms. Capone stated that over the past year, public comment has been directed toward a GAO review of museums and NAGPRA. This review would differ from the GAO's review of Federal agency implementation, which falls under the GAO's scope to investigate efficient and effective Federal spending and functions. Museum implementation has been at a different pace, does not involve the same degree of spending, and has not raised the same level of concern by the Review Committee. In addition, museum implementation is subject to Review Committee action and other DOI enforcement actions, such as civil penalties.

The Peabody Museum continues to consult with numerous tribes on identifying possible sacred objects and objects of cultural patrimony, to work to refine policies and procedures for sensitive collections, and to strive for improved approaches to expanding access by Native American communities. The Peabody Museum responds to frequent inquiries from students or other interested parties about NAGPRA implementation. Ms. Capone stated the staff at the Peabody Museum is grateful for the relationships that have been developed with the institution, and looks forward to new ways of understanding through the NAGPRA process.

Mr. Barker asked if Ms. Capone would provide a written copy of her comments to the Review Committee.

Ms. Capone agreed. Ms. Atalay thanked Ms. Capone for her comments and for voicing the concerns of the Peabody Museum.

**Mr. Ernest Vallo, Sr.**

Mr. Ernest Vallo, Sr., Pueblo of Acoma, New Mexico, thanked the Review Committee for the opportunity to speak. Mr. Vallo, Sr., stated his tribe had reburied ancestral remains at the Yellow Jacket Site, Mesa Verde National Park, in cooperation with the Southwest Conservancy District. Recently, the tribe has faced delays in the process when it was denied the opportunity to rebury in the Park remains that had originated from a different area, based on National Park Service policy. Mr. Vallo, Sr., asked for the Review Committee's assistance on this issue.

Mr. Barker thanked Mr. Vallo, Sr., for his comments. Mr. Barker confirmed with Mr. Vallo, Sr., that this issue could be addressed by a provision that would allow Federal lands to be used for the reinterment of human remains, and stated that this topic is currently noted in the Review Committee's draft report to Congress for FY 2011. Mr. Wright, Jr., asked about the Southwest Conservancy District. Mr. Vallo, Sr., stated that the Southwest Conservancy District buys and protects lands, but that he did not know its policy regarding burials. Mr. Wright, Jr., thanked Mr.

Vallo, Sr., for his comments.

**Ms. Jan Bernstein**

Ms. Jan Bernstein, Bernstein & Associates, thanked the Review Committee for the opportunity to speak. Ms. Bernstein stated that at the October 2009 meeting in Sarasota, FL, her client, the University of Colorado, presented two successful requests for disposition, one for 235 culturally unidentifiable human remains, which was discussed by Mr. Vallo, Sr., and one for 700 culturally unidentifiable human remains. Ms. Bernstein stated that the Southwest Conservancy District previously made land available for the Pueblo of Acoma to rebury culturally affiliated human remains and funerary objects, and had planned to allow for the reburial of the 235 human remains considered in October 2009 by the Review Committee, as well as the additional 700 human remains. However, the Southwest Conservancy District became overwhelmed with the requests for reburial and is working with their board and attorneys to develop a policy. This has delayed the burial and jeopardized its moving forward. Ms. Bernstein stated they were considering alternative burial sites, in consultation with the affected Indian tribes, state officials, the Colorado Historical Society, the museums housing the human remains, and the Federal landholding agencies.

Mr. Wright, Jr., asked about the proximity of BLM lands to the Southwest Conservancy District. Ms. Bernstein stated that, while there are BLM lands in the area, the Indian tribes involved would very much like to rebury on NPS lands. Mr. Hemenway asked whether the Indian tribes have control of the human remains. Ms. Bernstein confirmed that the Indian tribes did have control.

**Mr. Ashley George**

Mr. Ashley George, Tribal Elder, Fallon Paiute-Shoshone Tribe, welcomed everyone to his tribal homeland. Mr. George stated that his traditional, sacred way of life goes beyond history books, computers and scientific theory. Mr. George stated that he did not know the status of the human remains named "Spirit Cave Man," found years ago. Mr. George stated the name itself was misleading because his people were not cave people, and this is shown through their language. The only way to be an expert on Native people is to know the language.

Mr. Wright, Jr., thanked Mr. George for his comments. Ms. Atalay stated that prior to the meeting, the Review Committee asked for updates from the Bureau of Land Management and the Bureau of Indian Affairs on the human remains from Spirit Cave and Wizard Beach. Ms. Hutt stated that both the BLM and the BIA provided written updates to the Review Committee but, due to time constraints, were unable to make presentations at the meeting. Ms. Hutt stated that the National NAGPRA Program encouraged both agencies to attend the spring meeting in Santa Fe, NM.

**Mr. Lalo Franco**

Mr. Lalo Franco, Santa Rosa Rancheria, presented and read a resolution developed by the Central California NAGPRA Consortium (CCNC). Under the resolution, the Ione Band of Miwok Indians, the Santa Rosa Rancheria Tachi Yokut Tribe, and the Shingle Springs Band of Miwok Indians have joined together to form the CCNC "for the expressed purpose of the repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony, of our ancestors that are taken from our aboriginal lands and territories," and further have resolved that the CCNC "acknowledges the importance of the National NAGPRA Review Committee, and its role of oversight and mediation of the repatriation efforts of all tribal governments, and hereby pledge our support." Mr. Franco provided a copy of the resolution to Mr. Tarler.

Mr. Franco stated that the lack of a civil penalty investigator is of very real concern, as it can lead museums to feel that they do not have to comply with NAGPRA. Mr. Franco thanked the members of the Review Committee for their hard work.

Mr. Wright, Jr., thanked Mr. Franco for his comments.

## **Request by Los Angeles County, CA, that the Review Committee Act on an Agreement to Reinter Human Remains and Associated Funerary Objects Determined to be Culturally Unidentifiable**

### **Presentation**

Mr. Shiraz Tangri, Alston & Bird LLP, stated he was counsel for LA Plaza de Cultura y Artes Foundation and thanked the Review Committee for the opportunity to present a request to allow the County of Los Angeles to reinter human remains and artifacts at the historic cemetery located on the LA Plaza site. Mr. Tangri thanked the National NAGPRA Program staff for their guidance and cooperation in working through the unique circumstances of this issue.

Ms. Antonia Hernandez, Board Member of LA Plaza de Cultura y Artes Foundation, thanked the Review Committee for the opportunity to present this request. Ms. Hernandez stated that the LA Plaza de Cultura y Artes is unique among the museums and cultural attractions within the County of Los Angeles. Located at the heart of urban Los Angeles, its roots reach back to the founding of the city. LA Plaza de Cultura y Artes is the only institution of Los Angeles that celebrates the very people who founded the city: Mestizos, Mexicanos, Mulattos, and Native Americans. For over 20 years, civil leaders, community partners, developers, and others have attempted to resurrect this extremely important historical site. Ms. Hernandez stated that she has worked on the LA Plaza project for over ten years.

Historical records indicate that the cemetery had been moved in 1844, before the site became the location of the building and parking lot. During the construction process, historical monitors were present at all times, as required by the project's Environmental Impact Report (EIR). Human remains were found on the site in late October 2010, and immediately all work stopped. The county coroner was consulted and advised the Foundation to comply with the mitigation measures contained in the EIR. Following the guidelines contained in the EIR, the LA Plaza de Cultura y Artes Foundation immediately contacted the Archdiocese of Los Angeles, the former owner of the cemetery, to develop a plan to reinter the human remains. The Archdiocese of Los Angeles requested that all human remains excavated during the construction process be provided to the Archdiocese for reinterment at Calvary Cemetery, an existing Catholic cemetery.

In January 2011, members of the Native American community presented the LA Plaza de Cultura y Artes Foundation with copies of the Archdiocese burial records for the former cemetery. Only then did the LA Plaza de Cultura y Artes Foundation learn that many Native Americans, from a number of different southern California tribes, had been buried in the former cemetery. Based on that information, the LA Plaza de Cultura y Artes Foundation immediately halted excavation, redesigned the project plan to avoid any construction or excavation in the former cemetery area of the property, and worked with the County of Los Angeles in outreach efforts to engage the Native American community and other important stakeholders in a consultation process consistent with Federal and state laws. The overwhelming consensus among the consulting parties was to disallow destructive research and request that all remains and artifacts should be reburied as soon as possible. The LA Plaza de Cultura y Artes Foundation is requesting that, pursuant to NAGPRA, the Review Committee recommend to the Secretary of the Interior to allow respectful, on-site reburial of all the human remains and associated artifacts recovered from the LA Plaza site. Eventually, the site would include an informative, educational opportunity, so people can learn about the history of the cemetery and the individuals buried there.

Ms. Dawn McDivitt, Project Manager, Chief Executive Office of the Los Angeles County, presented the following information to the Review Committee:

- Pictures and drawings to aid in conceptualizing the site. These show the various views of the site and the protective measures currently in place.
- The latest status report, which is posted online for the Native American community and other interested parties. This report is updated every 30 to 60 days.
- The executive summary, developed by a Section 106 consultant, which contains the inventory and details of consultations that have occurred.
- Letters/emails of support from three tribal councils.
- An educational piece on the LA Plaza Foundation which, along with other education programs, defines the

history of the Los Angeles Civic Center area and the founding of the city. These plans include the development of a protected Memorial Garden, which will be available to the Native American community for ceremonial purposes while providing a secure environment for the reburials. Ms. McDivitt stated that all the parties who engaged in the consultation are in full agreement with the on-site reburial and reassembly, to occur as soon as possible.

Mr. Joseph Ontiveros, Cultural Resource Director, Soboba Band of Luiseno Indians, stated the Soboba Band of Luiseno Indians was the only federally recognized tribe to consult on the project, and was in favor of the reburial as soon as possible.

#### **Review Committee Questions and Discussion**

Mr. Barker asked what the preferred approach would be under state law. Mr. Tangri stated that the California state law process was followed until the discovery of information that some of the human remains could be Native American, at which point the excavation work ceased and the consultation process began. Mr. Tangri stated that California has its own equivalent of NAGPRA, which also involves consultation. The California Native American Heritage Commission reviewed the burial records that had been located, identified the potential tribes that may have some connection, and provided contact information for those tribes. Mr. Tangri stated that they have worked to reach out to all of the parties, through written communications and status updates, and extended invitations to consult with any interested parties. The Soboba Band of Luiseno Indians has engaged in the consultation process, along with locally recognized groups. Mr. Tangri stated that the consultation process will continue to allow for further discussion of details of the Memorial Garden, but there is currently consensus by all parties for reburial consistent with state law.

Mr. Hemenway asked if it was possible to identify living or lineal descendants for those individuals within the cemetery. Mr. Tangri stated that is a difficult question that they have considered at length. The difficulty in making such determinations is that the only records available are handwritten mission records in Spanish. While these have been transcribed, there were no grave markers or grave stones located with the human remains and no way to link any of the human remains with lineal descendants. The consulting parties have made it clear that they do not wish to have any destructive testing done on the remains. Mr. Tangri stated that part of LA Plaza de Cultura y Artes Foundation's mission is to support its multicultural history in a multicultural society, and they would like to treat this as a single community without creating divisive lines.

Mr. Hemenway asked for an explanation of the use of the term "Memorial Garden" compared to "cemetery." Mr. Tangri stated that the term "cemetery" brings to mind ordered graves with stones or markers. At this site, the burial locations were found at multiple depths, one above another. There is no intention to conduct further excavation in order to locate additional burials. Mr. Tangri stated that the terminology was flexible and could be determined through consultation; the notion of a memorial garden was to reflect a place that could be visited by people who have a connection. Mr. Hemenway asked about security of the site. Mr. Tangri stated that security was currently in place, as described by Ms. McDivitt, and would be a priority moving forward.

Ms. Farm asked about the agreement mentioned in the submitted materials. Mr. Ontiveros stated those are the conditions requested by the Soboba Band of Luiseno Indians. Mr. Tangri stated that the LA Plaza de Cultura y Artes Foundation is requesting reburial consistent with state law, and although there is not an agreement with any individual tribe, the county has agreed to the conditions requested by the Soboba Band of Luiseno Indians. Ms. Farm asked for clarification of what is included in the request. Mr. Tangri stated that the request is to rebury all human remains and associated funerary objects.

Ms. Farm asked about identification of any of the human remains as Native American. Mr. John Dietler, Cultural Resources Program Director, SWCA Environmental Consultants, stated that mission records indicate that individuals of many cultures were buried in the cemetery; however, the condition of the human remains prevents assigning ethnicity. The remains of four individuals were found with associated funerary objects reasonably determined to be Native American. A large number of the individuals identified as buried in the cemetery were Native American, so while the exact number of Native Americans is unknowable, it is likely far more than four. Mr. Dietler stated that there are certainly individuals that appear to be non-Native, based on clothing and buttons, and church records identify non-Native American burials in the cemetery.

Ms. Farm stated that, based on that information, she would question whether the Review Committee has jurisdiction to consider this issue. Mr. Simpson stated that under the statute and regulations, the Review Committee has jurisdiction over Native American human remains and cultural items, but not over anything that is non-Native American, which would be outside the jurisdiction of NAGPRA. Ms. Farm stated that raises a concern as the request includes the reburial of non-Native human remains and artifacts.

Mr. Ontiveros stated that the request is to rebury all the human remains and funerary objects because there is no way to differentiate non-Native American human remains from Native American human remains and of these individuals all need to be reburied. The records document that 41 of the individuals buried in the cemetery are Luiseno Indians. With the approval of the Review Committee, this request can move forward. Mr. Tangri stated that consultations have included non-Native groups who have identified connections to the cemetery. Ms. Farm stated that she is sympathetic to the situation, and was seeking clarification from counsel as to the Review Committee's ability to act. Ms. Hernandez stated that if the Review Committee could give approval to rebury those that might have been Native American, and with state law allowing the reburial of the non-Native individuals, then the reburial could occur. Mr. Simpson stated the Review Committee could make a recommendation on what can be determined to be Native American, while noting that the Review Committee does not have jurisdiction over any non-Native American human remains. The Review Committee could also note that for a large portion of the remains there may not be sufficient information to make a determination of whether they are Native American.

Mr. Hemenway thanked the parties for presenting this issue, and stated he wanted to see the human remains put in the ground as quickly as possible. Mr. Hemenway asked if the Review Committee's action was necessary for this issue to move forward. Mr. Tangri stated that was their understanding. Mr. Barker thanked the participants for their work, which has satisfied the spirit of NAGPRA by consulting and making arrangements that are satisfactory to all parties. Mr. Barker stated that he felt the most important element was that the approach being adopted was identical regardless of whether the human remains are Native or non-Native. Mr. Barker suggested recommending to the Secretary that the Review Committee approve the reinterment of the human remains, and note that the Review Committee does not know whether it has authority over any specific individual set. Mr. Wright, Jr., acknowledged the parties' efforts to come together and reach agreement regarding this issue, working through the regulations and the impediments. The Review Committee consulted off the record with counsel.

#### **Review Committee Motion**

Mr. Barker made a motion that the Review Committee has concluded that it cannot make a determination whether the remains are Native American or not; second, that the Review Committee believes that Los Angeles County may therefore proceed under other law; and third, that the Review Committee requests that the Secretary's letter reflect this view. Ms. Farm seconded the motion. The motion passed by unanimous vote, with one abstention (Mr. Wright, Jr.).

#### **Action Item: Discussion and Review of the Review Committee's Dispute Procedures and Findings Procedures**

A subcommittee (Ms. Atalay, Mr. Hemenway, and Ms. Worl) was appointed at the June 2011 meeting, to review the Dispute Procedures and Findings Procedures of the Review Committee. Ms. Atalay reported on the progress of the subcommittee, and stated that the subcommittee would like to report further information at the Santa Fe, NM meeting in May 2012.

Ms. Atalay stated that the subcommittee discussed developing a dispute process to make it easier for Indian tribes and museums involved in disputes, with the goal of helping parties resolve their issues and perhaps lessen the number of disputes that need to come before the Review Committee. One step is to develop a tool kit for Indian tribes and museums, which could include the following:

- A process flowchart with timelines.
- A checklist to clarify whether an issue is a finding of fact or a dispute.
- Sample cases to highlight the different steps and define the different processes.
- A "What to do if" informational sheet, covering questions such as "What do I do if I receive a letter rejecting a claim?" or "What do I do if I am not receiving communications from a museum?"

- Information on the data that is required to support the dispute.

Ms. Atalay stressed that all information should be in plain English, to foster understanding by all constituents.

The subcommittee also discussed the dispute process for parties appearing before the Review Committee. The following items/questions were raised for discussion:

- Set amount of time allowed for each party.
- Clarify the audience for the disputes. The Review Committee members have received and reviewed the documentation for disputes, but not necessarily the people present at the meeting. What repercussions, if any, does that present?
- No new information or material can be introduced at the dispute proceedings.
- Public comment cannot be used to present information or materials regarding disputes.
- Should the Review Committee hear and consider a dispute at one meeting and then present discussion and recommendations at the following meeting or by written comment?
- Should (or can?) the Review Committee include a provision in the procedures that all parties who participate in the dispute process agree to follow the Review Committee's recommendations before coming to the Review Committee?

Ms. Atalay stated that the Review Committee is quite aware that the National NAGPRA Program plays a critical role in these procedures, particularly the DFO, and that straightforward communication is critical for all parties involved.

Mr. Hemenway described the background that inspired the discussion of the above items. Mr. Hemenway stated that the main goal in working on the dispute procedures was simplification of the process so people could look at it and immediately understand what they need to do to reach a conclusion in the fastest time possible. Many times disputes arise from a denied repatriation claim, so attention to the construction of the claim is important.

Mr. Hemenway summarized a situation that is currently unresolved for his tribe, Little Traverse Bay Bands of Odawa Indians, Michigan, for which a museum has denied a claim for items based on several reasons considered invalid by the tribe. Mr. Hemenway stated that the tribe has previously repatriated similar items from other institutions across the country. Mr. Hemenway stated that better understanding of NAGPRA requirements to demonstrate cultural affiliation, or a determination that an item is a sacred object or an object of cultural patrimony, would lower the number of disputes. Mr. Hemenway stated that another consideration that should be taken during consideration of disputes is allowing for different cultural protocol.

Ms. Atalay stated that this process could be considered part of the ongoing educational efforts made by the National NAGPRA Program. Ms. Atalay stated that the subcommittee would like to present further information and sample documents at the Santa Fe, NM meeting.

Mr. Wright, Jr., suggested including wording to provide guidance to tribes on alternatives to disputes.

### **Presentation: Federal Agencies**

Ms. Atalay stated that she would like to acknowledge receipt of written statements from the Bureau of Indian Affairs and the Bureau of Land Management regarding the situations at Wizard Beach and Spirit Cave. Ms. Atalay thanked the BIA and BLM for their work, and requested that this item be placed on the agenda for the Santa Fe, NM meeting.

### **Presentation: An Update on the Accomplishments of the National Park Service's Park NAGPRA Program**

#### **Ms. Mary Carroll**

Ms. Mary Carroll, Program Lead, Park NAGPRA Program, thanked the Review Committee for the opportunity to speak, and offered greetings on behalf of Ms. Cyd Martin, Park NAGPRA Program Manager, who was unable to attend the meeting as planned due to a family emergency. Ms. Carroll thanked Mr. Vallo, Sr., for raising the issue of reburial of human remains on Federal lands, and acknowledged it as a serious problem for tribes throughout the



country. Ms. Carroll clarified that the NPS, BLM, and Forest Service all permit reburial of remains that have come from sites within their boundaries, and prohibit the reburial of remains from outside their jurisdictional boundaries. This means that tribes receiving remains from sites on private, state or other lands are unable to reinter those remains on Federal lands. The NPS, BLM and Forest Service have all received requests for reburial sites. Resolution of this policy issue would need to be addressed at the Departmental level.

Ms. Carroll gave a brief overview of the Park NAGPRA Program. Unlike other Federal agencies, the NPS both complies with and administers NAGPRA. This dual role, originally performed by a single NPS office, created some confusion about NPS compliance responsibilities. Thus, those functions were separated within NPS, resulting in the National NAGPRA and Park NAGPRA Programs. The National NAGPRA Program's focus is external to the NPS, and includes developing regulations and assisting Indian tribes, Native Hawaiian organizations, museums and Federal agencies with the NAGPRA process. The Park NAGPRA Program, on the other hand, was created to oversee NPS's own compliance with NAGPRA and assists all NPS sites with compliance activities, by providing technical advice, guidance, training and funding. The Park NAGPRA Program is located in Denver, CO, in the Intermountain Region Office of Indian Affairs and American Culture. Staff includes Ms. Cyd Martin, Program Manager and Director of Indian Affairs and American Culture for the region, Ms. Mary Carroll, Program Lead, and Ms. Brenda Todd, part-time student assistant. Each of the seven regions has at least one person designated to serve as regional NAGPRA Coordinator.

Ms. Carroll stated that the NPS continues to work in partnership with Indian tribes and Native Hawaiian organizations to achieve the goals of NAGPRA. Since late 2009, 524 individuals and 6,638 funerary objects have been repatriated by 13 parks. As of November 1, 2011, 92 percent of the human remains and 49 percent of the funerary objects described in published notices have been repatriated. Ms. Carroll explained that the number of repatriated funerary objects may seem low; however, 42,000 funerary objects (beads) that have not been returned are associated with just 14 individuals.

#### **Ms. Brenda Todd**

Ms. Brenda Todd, student assistant, Park NAGPRA Program, stated the Park NAGPRA Intern Program provides opportunities for students to work in parks, centers and offices nationwide on NAGPRA projects, and gives hands-on help to parks with immediate NAGPRA needs. In FY 2011, six students worked on projects in three parks and one archeological center. The program is project oriented. Each year, the Park NAGPRA Program solicits proposals from parks for projects, and the recipient parks are responsible for hiring interns and are encouraged to solicit applications from Native American students.

Ms. Todd stated that the NPS and Park NAGPRA Program are committed to proactively addressing the issue of contaminated collections in National Parks. A Director's Memo was issued in November 2008, in which regional directors and superintendents were asked to go beyond NAGPRA's requirement to inform tribes of known treatments. In all NAGPRA consultations, NPS officials inform tribes about contaminants, whether the object's treatment history is known or not. NPS officials also are directed to inform tribes that the NPS has the capacity to test for certain contaminants.

Ms. Todd stated that the GAO's review of Federal agency compliance describes NPS as one of the top three agencies for compliance. The primary issue for the NPS raised by the GAO concerned some draft Notices of Inventory Completion that had been submitted to the National NAGPRA Program a number of years ago, but had not yet been published, in large part due to a dispute. As a significant amount of time had passed since they were drafted, the draft notices were withdrawn to allow the parks to verify NAGPRA inventories, consult with Indian tribes, and confirm/revise the determinations of cultural affiliation in order to complete the notice publication process. All of these notices should be published by the end of 2012.

### **Presentation: An Update on Repatriation by the USDA Forest Service and the Agency's Response to the Federal Agency NAGPRA Repatriation Data Call in FY 2011**

#### **Mr. Frank Wozniak**

Mr. Frank Wozniak, NAGPRA Coordinator for the USDA Forest Service as a whole and for the Southwestern

Region, thanked the Review Committee for the opportunity to provide an update on NAGPRA implementation within the Forest Service. Mr. Wozniak stated he has been involved with NAGPRA implementation since January of 1991, serving in the capacity of NAGPRA Coordinator for the Southwestern Region of the Forest Service since 1992 and for the Forest Service as a whole since 2001. Mr. Wozniak described spreadsheets that detailed the status of the Forest Service's NAGPRA implementation efforts through FY 2011. These spreadsheets had been provided to the Review Committee, and were posted on the National NAGPRA Program website prior to the meeting. Mr. Wozniak stated he had corrections to this information and would provide an updated version to the Review Committee.

Mr. Wozniak reported that, as of the end of FY 2011, the Forest Service has repatriated 5,307 unassociated funerary objects, 1,096 Native American human remains, and 17,403 associated funerary objects. Mr. Wozniak stated that all Native American human remains repatriated thus far have been reburied on National Forest System lands, which is part of a policy in place since the early 1990s.

Mr. Wozniak stated that the Forest Service has worked to fulfill the GAO's recommendations by providing information for the repatriation data call to the National NAGPRA Program. Mr. Wozniak thanked Ms. Hutt and the National NAGPRA Program staff for their assistance and cooperation, particularly Ms. Soriano for her work in developing and populating the Federal agency data call for 2010 and 2011. Mr. Wozniak stated that there are discrepancies between the information contained on the Forest Service NAGPRA implementation summary and the data call, explained them, and expressed the hope that they would be resolved soon.

Mr. Wozniak stated that in FY 2012, the Forest Service will publish additional notices, several of which are currently in process. In addition, the Forest Service is continuing to repatriate Native American human remains, associated funerary objects, and unassociated funerary objects, particularly in Region 3. Mr. Wozniak stated that the Forest Service anticipates repatriating in excess of 300 sets of human remains in FY 2012 from several national forests, including the Coconino National Forest, the Gila National Forest, and the Apache-Sitgreaves National Forest. Mr. Wozniak stated that the Forest Service will complete the repatriations on the Coconino National Forest within the next three to four years, and all human remains will be reburied on National Forest System lands. These repatriations will exceed 2,500 sets of human remains in total.

#### **Review Committee Questions and Discussion**

Mr. Barker thanked Mr. Wozniak for his presentation, and asked if Mr. Wozniak could identify any barriers encountered by the National Forest Service in implementing NAGPRA. Mr. Wozniak stated there were none at present. One past barrier was funding, which was resolved with the passage of the Farm Bill in 2008. The Farm Bill included provisions from Congress that formalized and gave statutory status to the existing Forest Service policy of permitting reburials for human remains that came from Forest Service lands. In addition, repatriation grants from the National NAGPRA Program supported repatriations to tribes from the Forest Service in FY 2010 and FY 2011.

#### **Public Comment – November 9, 2011**

##### **Ms. Hilary Soderland**

Ms. Hilary Soderland stated she was present at the meeting as an observer for the Society for American Archaeology (SAA). The SAA appreciates being able to observe and thanks the Review Committee for this opportunity.

##### **Ms. Melany Johnson**

Ms. Melany Johnson, Susanville Indian Rancheria, stated the Rancheria represents four tribes: the Northern Paiute, Washoe, Pit River, and Mountain Maidu. A NAGPRA team and the Northeastern California NAGPRA Coalition were formed to work on NAGPRA implementation, and have received grants from the National NAGPRA Program to help with consultation and repatriation efforts. Ms. Johnson stated the Susanville Indian Rancheria has worked for eight years trying to repatriate ancestors and associated funerary objects from the Phoebe A. Hearst Museum at the University of California, Berkeley, CA. A recent letter from Ms. Salvador, Director of the Phoebe A. Hearst Museum, stated that part of a collection of human remains and associated funerary objects from one site would be returned, while another part would not be returned due to the need for further study, review, and ongoing consultation. Ms. Johnson asked the Review Committee for assistance in this matter, as these ancestors are related to the tribes and cannot be separated. The ancestors came from the tribes' aboriginal and political boundaries, 12 miles from Susanville Indian Rancheria.

**Mr. Lalo Franco**

Mr. Lalo Franco introduced his associate, Mr. Ray Gonzales, from the Cultural and Historical Preservation Department, Santa Rosa Rancheria. Referencing the discussion on the Review Committee dispute resolution procedures, Mr. Franco stated that they would be in favor of developing some type of dispute resolution process prior to issues coming to the National NAGPRA Program and the Review Committee. Mr. Franco stated that, based on experience, certain issues could have benefited from early resolution efforts. Mr. Franco encouraged museums, the National NAGPRA Program and tribes to work together toward fulfilling the mission and spirit of NAGPRA. Mr. Franco thanked the Elders and local hosts.

**Mr. Ben Aleck**

Mr. Ben Aleck, Collections Manager, Pyramid Lake Museums and NAGPRA Coordinator, welcomed everyone to the Great Basin. Mr. Aleck stated that there are four tribes in the Great Basin; the Northern Paiute, Western Shoshone, Washoe, and Southern Paiute. The people of the Great Basin have been here for thousands of years. Mr. Aleck stated that two individuals, from Spirit Cave and Wizard Beach, were still in museums. The individual from Wizard Beach is carbon dated at 9,200 years old, and the individual from Spirit Cave is carbon dated at 9,500 years old. The tribes are working to have these returned; however, it is proving difficult to navigate through the laws and regulations to repatriate. The Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation is working with a California coalition, a NAGPRA coalition and the Great Basin coalition, with a lot of the knowledge coming from traditional people. The tribes of the Great Basin support each other in the efforts to have these human remains returned.

Mr. Aleck stated that the first time the people at Pyramid Lake saw a non-Indian was 1844. Mr. Aleck stated that over time it seems to get more complicated to do simple things. Mr. Wright, Jr., stated he agreed that the laws are complex and often require tribes to change traditions in order to adapt. Mr. Aleck stated the Great Basin tribes covered a lot of area in their hunter/gatherer lifestyle. Many were buried where they passed. This means that the Great Basin tribes have to deal with many agencies (including Federal, state and local) and their individual laws.

**Mr. Matthew Nelson**

Mr. Matthew Nelson, Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, thanked the Review Committee for the opportunity to be present at the meeting and to make a presentation. Mr. Nelson stated that the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony is one of seven affiliated tribes in the Owens Valley. Their first NAGPRA grant, in FY 2010, has enabled the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony to gain a greater understanding of where the ancestors were found and where they are currently held, and to work through the necessary steps toward repatriation. In addition, the Owens Valley tribes have had an opportunity to participate in a dialogue about culturally appropriate reburial, which is a very new concept for these tribes. Mr. Nelson stated that the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony is grateful to the NPS for the funding that enabled this opportunity.

Mr. Nelson stated that there is no indigenous word for reburial, as it was never necessary. Bringing tribal Elders, cultural practitioners, and medicine men together to have these conversations has helped to reinvigorate culture in many ways. To date, the tribes have been in consultation with 22 different institutions and agencies, mostly throughout the Great Basin. Mr. Nelson stated that, in their experience, the most cooperative institutions have been Southwest Museum of the American Indian, Los Angeles, CA; the Los Angeles County Museum of Natural History, Los Angeles, CA; and the Phoebe A. Hearst Museum of Anthropology, Berkeley, CA. The only true barrier encountered by the tribes so far has been working with the BLM California State Office, which has been incredibly difficult. The BLM now owns approximately three-quarters of a million acres in the ancestral territory of the Owens Valley Paiute people.

**Ms. Mari Lyn Salvador**

Ms. Mari Lyn Salvador, Director, Phoebe A. Hearst Museum of Anthropology, thanked Ms. Melany Johnson and her colleagues for taking the time to come to the museum for consultation, and stated that the Phoebe A. Hearst Museum respects the decision of the Susanville Indian Rancheria to seek repatriation of the entire group of human remains. Ms. Salvador stated that the Phoebe A. Hearst Museum was working diligently to build and train their NAGPRA team, including bringing seven staff members to the National NAGPRA Program training in Reno, NV. Ms. Salvador thanked Mr. Lalo Franco for his comments, and stated that the Phoebe A. Hearst Museum is working to

digitize documents which will facilitate faster responses to claims. All information will eventually be provided to the communities that come to the Phoebe A. Hearst seeking information.

### **Upcoming Meetings**

Ms. Hutt stated that in response to a request by the Review Committee, the National NAGPRA Program planned the next meeting to be held May 9-10, 2012, at the La Fonda Hotel on the Plaza, Santa Fe, NM. The meeting notice was published in the Federal Register on November 8, 2011, at pages 69282-69283. The National NAGPRA website will have additional information on the venue, as well as deadlines for submissions. This can be found at: <http://www.nps.gov/nagpra/INDEX.HTM>

At the Syracuse, NY meeting, the Review Committee requested that the fall 2012 meeting be held in Hawaii. Ms. Hutt explained that, as 2012 is an election year and due to resulting budgetary considerations, the National NAGPRA Program will plan meetings in Washington, DC, in November 2012, and Hawaii in the spring of 2013. In addition, the National NAGPRA Program will publish a Federal Register notice for a meeting by teleconference in December 2012, in the event that such a meeting is necessary for the Review Committee to complete its report to Congress for FY 2012.

### **Closing Comments**

Ms. Hutt thanked the members of the audience for attending and making presentations, the Review Committee members for their hard work prior to and during the meetings, the NAGPRA constituents who work diligently to implement NAGPRA, and the National NAGPRA Program staff and counsel, Ms. Mattix and Mr. Simpson.

Mr. Tarler stated he would again like to thank the hosts of the meeting for their warm welcome and generous hospitality; the National Judicial College and the National Tribal Judicial Center at the University of Reno – Nevada; the Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; and the Reno-Sparks Indian Colony, Nevada.

### **Meeting Adjournment**

Mr. Ralph Burns, Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, offered a traditional closing.

### **Review Committee Motion**

Mr. Barker made a motion to adjourn the meeting. Mr. John seconded the motion. The motion passed by unanimous vote.

The meeting was adjourned at 12:10 p.m., Wednesday, November 9, 2011, by Mr. Wright, Jr.

Certified –

*Signed* \_\_\_\_\_

Mr. David Tarler,  
Program Officer, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

*March 2, 2012* \_\_\_\_\_

Date

Approved on behalf of the Review Committee –

*Signed* \_\_\_\_\_

Mr. Mervin Wright, Jr.  
Acting Chair, Native American Graves Protection  
and Repatriation Review Committee

*February 28, 2012* \_\_\_\_\_

Date